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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/598,254

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Cornelis Dirk Jongenengel

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EXAMINER

WOZNICKI, JACQUELINE

ART UNIT

PAPER NUMBER

3774

NOTIFICATION DATE

DELIVERY MODE

07/09/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

efspatents@sbiplaw.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/598,254	<b>Applicant(s)</b> JONGENENGEL, CORNELIS DIRK	
	<b>Examiner</b> JACQUELINE WOZNICKI	<b>Art Unit</b> 3774	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 04 May 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Response to Arguments*

Applicant's arguments, see Page 3, lines 13-15, filed 05/04/09, with respect to **Claim 1** have been fully considered and are persuasive. The 35 USC § 112 Claim Rejection of **Claim 1** has been withdrawn.

Applicant's arguments, see Page 3, lines 20-23, filed 05/04/09, with respect to **Claim 5** have been fully considered and are persuasive. The 35 USC § 112 Claim Rejection of **Claim 5** has been withdrawn.

Applicant's arguments filed 05/04/09 have been fully considered but they are not persuasive.

On Page 4 of Applicant's arguments, Applicant argues that Fay (US 6231617) does not disclose that the plate is substantially non-circular when viewed from the open end of the stocking due to Fay's Claim 1 and further due to the specification, specifically Column 3, lines 1-10 of Fay. Applicant argues that the plate is circular as seen in Figure 3, item 18c. Examiner respectfully disagrees.

Claim 1 of Fay recites the liner as being generally tubular in shape and having a rounded closed distal end, and a distal attachment plate secured to the liner at its distal end as Applicant points out. However, the generally tubular shape of the liner and its rounded end does not mean the plate is circular. As an example, Applicant's Figure 3 comprises a liner with a substantially rounded end without a circular plate. Fay further discloses the plate consisting of elongate arms (Figure 3 and 3A, item 20) that indicate

that the plate is not circular (Column 5, lines 21-29). As such, the plate of Fay is substantially non-circular and **claim 1** is not novel in view of Fay.

On page 4, Applicant argues that there is no indication in Fay that the form-retaining disc (Figure 2, item 18b) is substantially oval. Examiner respectfully disagrees.

The disc as shown in Figure 2 (item 18b) is substantially oval in shape when viewed from the open end of the stocking. If you look down from the open end of the stocking onto the base plate, the disc would appear substantially as an oval (a circular cross section is substantially oval). As such, the disc of Fay is substantially oval and **claim 2** is not novel in view of Fay.

On Page 5, Applicant argues Klotz does not teach or suggest a form-retaining disc or one that has a triangular profile because Figure 10 depicts a cross-section that is taken at a location too far removed from the bottom wall (Figure 6, item 34) of the outer shell (Figure 6, item 18). Examiner acknowledges that Figure 10 is taken too far removed from the bottom wall of the outer shell, but directs Applicant's attention to Figure 8, which shows the same triangular cross-section of the form-retaining disc. As such, the liner as taught by Fay in view of Klotz has a substantially triangular form-retaining disc and **claim 3** is not novel.

On Page 5, Applicant argues Klotz teaches the cross-section of the inner shell is pentagonal based on Column 2, line 66.

Examiner respectfully disagrees with Applicant's argument that the cross-section is pentagonal. Figure 8 of Klotz shows the substantially triangular disc. The disc has three rounded corners that make it substantially triangular.

On page 5, Applicant argues that the generally arcuate cross-section of the bottom walls (items 24 and 34) that Klotz describes can not be triangular with rounded corners. Examiner respectfully disagrees.

The disc can be both arcuate and triangular with rounded corners, for example as seen in Applicant's **Claim 6** (a cup-shaped design is arcuate). Furthermore, the arcuate shape as described by Klotz and pointed out in Applicant's response, indicates the cup-shape of **Claim 6**. The triangular shape is, as stated above, seen in Klotz's Figure 8. As such, the rounded corners of the triangular disc in a cup-shaped design is not novel in view of Fay and Klotz, and so **claims 4 and 6** are not novel.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1 and 2** are rejected under 35 U.S.C. 102(b) as being anticipated by Fay (US 6,231,617).

Regarding **claim 1**, Fay teaches **a liner** (Figure 1, item 10) **for connecting a prosthesis with the stump of an amputated lower leg, comprising a stocking**

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(Figure 1, item 16) **from a substantially flexible material** (column 4, lines 54-58) **for surrounding the stump with a first, open end** (Figure 3, item 14) **for receiving the stump therethrough, and a second, closed end** (Figure 1, item 12) **which is, on the outside, provided with a distal attachment plate** (Figure 3, item 13) (i.e. a **coupling means**) **for coupling to the prosthesis, wherein the stocking** (Figure 1, item 16) **is, on the inside, provided with a substantially form-retaining disc** (Figure 3, item 18c) **for supporting the end of the stump, and wherein the substantially form-retaining disc** (Figure 3, item 18c) **is substantially non-circular** (column 5, lines 18-31) **in a view from the open end of the stocking.**

Regarding **claim 2**, Fay further teaches the substantially form-retaining disc to be substantially oval (Figure 2, item 18b) when viewed from the open end of the stocking.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 3-6** are rejected under 35 U.S.C. 103(a) as being unpatentable over Fay (US 6,231,617) in view of Klotz (US 5,529,575).

Regarding **claim 3**, Fay teaches all of the limitations set forth in claim 1, but fails to teach the form retaining disc to be substantially triangular in the view from the open end of the stocking.

However, Klotz teaches a cross-section of the bottom wall of prosthesis to be substantially triangular in shape (Figure 8). The bottom wall of the prosthesis, like the form retaining disc of the instant application, contacts the stump of the patient and is shaped to conform to the patient's stump (column 1, lines 65-67).

Fay and Klotz are concerned with the same field of endeavor, namely prostheses for lower leg amputees.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Fay by incorporating a triangular cross-section for the surface contacting the patient's stump, as taught by Klotz, in order to make a prosthesis that conforms to the patient's stump.

Regarding **claim 4**, Klotz further teaches the corners to be rounded (Figure 8).

Regarding **claim 5**, it would have been obvious to one of ordinary skill in the art at the time of the invention to make the substantially triangular disc to be arranged for supporting the tibia with a part which is located near a corner of the triangle. Such a modification is well within the technical grasp of one ordinary skill in the art and creates predictable results of creating a more functional and comfortable prosthetic. *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1742, 82 USPQ2d 1385, 1396 (2007).

Regarding **claim 6**, Fay teaches the disc to have a convex design (i.e. a substantially cup-shaped design) (column 5, lines 18-19).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JACQUELINE WOZNICKI whose telephone number is (571)270-5603. The examiner can normally be reached on M-R, 9 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Isabella can be reached on (571)272-4749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JACQUELINE WOZNICKI/  
Examiner, Art Unit 3774  
06/22/09

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